IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:11ev279

STEPHEN GAINEY,)	
)	
Plaintiff,)	
)	
v.)	
)	ORDER
ALLIANCE ONE,)	
)	
Defendant.)	
)	

Pending before the Court is Defendant's Motion to Compel [# 12].

Defendant moves to compel Plaintiff to respond to its Interrogatories and Request for Production of Documents. Plaintiff did not respond to the motion. Upon a review of the record and Defendant's motion, the Court **GRANTS** the motion [# 12].

I. Analysis

Generally speaking, parties are entitled to discovery regarding any non-privileged matter that is relevant to any claim or defense. Fed. R. Civ. P. 26(b)(1). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." <u>Id.</u> Where a party fails to respond to an interrogatory or a request for production of

documents, the party seeking discovery may move for an order compelling an answer to the interrogatories or the production of documents responsive to the request. Fed. R. Civ. P. 37(a)(3)(B). "Over the course of more than four decades, district judges and magistrate judges in the Fourth Circuit . . . have repeatedly ruled that the party or person resisting discovery, not the party moving to compel discovery, bears the burden of persuasion." Kinetic Concepts, Inc. v. ConvaTec Inc., 268 F.R.D. 226, 243 (M.D.N.C. 2010) (collecting cases); Mainstreet Collection, Inc. v. Kirkland's, Inc., 270 F.R.D 238, 241 (E.D.N.C. 2010); Billips v. Benco Steel, Inc., No. 5:10cv95, 2011 WL 4005933 (W.D.N.C. Sept. 8, 2011) (Keesler, Mag. J.).

Plaintiff has not responded to Defendant's Interrogatories or Request for Production of Documents as required by the Federal Rules. If Plaintiff wishes to maintain this action against Defendant, he must participate in the discovery process. Accordingly, the Court **GRANTS** the motion [# 12] and **DIRECTS** Plaintiff to respond to Defendant's Interrogatories and produce all responsive documents to Defendant's Request for Production of Documents within twenty (20) days of the entry of this Order. The failure to comply with the Court's Order may result in the Court recommending that the District Court dismiss this action for failure to prosecute.

Conclusion II.

The Court **GRANTS** Plaintiff's Motion to Compel [# 12]. The Court **DIRECTS** Plaintiff to respond to Defendant's Interrogatories and produce all responsive documents to Defendant's Request for Production of Documents within twenty (20) days of the entry of this Order. The failure to comply with the Court's Order may result in the Court recommending that the District Court dismiss this action for failure to prosecute. Finally, the Court finds that an award of costs is not warranted at this time.

Signed: August 8, 2012

Dennis L. Howell

United States Magistrate Judge

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